

December 19, 2001

Mr. Andrew Stewart
DNR Bureau of Air Management
P.O. Box 7921
Madison, WI 53707-7921

Dear Mr. Stewart,

The Kohler Co. would like to make the following comments regarding the proposed revisions to Wisconsin's Air Toxics Rule, NR445. The comments follow the document WDNR provided entitled "Revision Draft3 TAG.doc".

Page	Reference	Subject	Kohler Co. Comments
4	NR406.04(2)(f)1.	Construction permits	1. Column (f) should be included in the referenced column headings.
5	NR410.04(2)(b)2.	Inventory Fees	1. Kohler Co. does not believe that it is appropriate to raise the cap on emissions requiring fee payment under this rulemaking. Emission fee rate changes are a separate issue from Air Toxics and should be addressed, if necessary, under separate rule making.
9	NR445.02(5)	Definition: Due diligence	1. The sentence "This effort would include ..." should be changed to "This effort <i>may</i> include considering information from:" The word "would" requires that each listed source be researched, regardless of how appropriate or likely better information will be obtained. Prescriptive, mandatory language takes away from the intent of due diligence.
10	NR445.02(15)	Definition: On-road fuel oil	1. Since different fuels may be defined as "on-road" across the country, Kohler Co. proposes that the wording "... <i>in the area in which the diesel engine is operated</i> " be added to the end of the currently proposed definition.
11	NR445.02(XX)	Definition: Sensitive subgroup	1. The proposed definition is too vague and broad.

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15	NR445.04(5)	Compressed Ignition Internal Combustion Engines	<ol style="list-style-type: none"> 1. Kohler Co. challenges the need for WDNR to remove the existing exemption for diesel exhaust. We believe the analysis that WDNR did on existing diesel generators permitted in Wisconsin greatly exaggerated any potential risk. <ul style="list-style-type: none"> • The study failed to consider the far cleaner burning diesel engines EPA is currently implementing through its phased TIER I, II and III programs. As these cleaner burning engines are phased in the overall emission rates will automatically drop. • The use of fully allowed (potential) operational hours under the permits was also very unrealistic. We would expect that in reality, hardly any of the sources analyzed have the potential to operate anywhere near the number of hours per year they are allowed to operate under their permits. Does the WDNR have data showing the actual number of hours the generators operated or actual gallons of fuel the generators burned against the values used in the analysis for those same units? 2. The proposed fuel use trigger value of 40,000 gallons per year was supposedly based on the amount of fuel that the engine powering a 3,000 kW generator would burn if ran for 200 hours. While we do not have fuel consumption data for a 3,000 kW unit, we do have literature showing a 2,000 kW model burning 153 gph at full load. Based on the 2,000 fuel usage, the predicted fuel usage of a 3,000 kW generator at full load would be 229.5 gph. This would translate to 45,900 gallons/200 hrs. It is requested that the fuel usage trigger value be revised to at least 45,900 gallons per year. 3. BACT is to be required for “Suspected Carcinogens”. It is inappropriate to require, or arbitrarily define particulate control as BACT within the rule. Request that BACT be listed as the control requirement instead of particulate control for existing sources burning greater than the trigger about of diesel fuel. 4. Mandatory diesel particulate controls (DPC) will be a very major cost penalty for Wisconsin industries to bear. Based primarily on cost estimates from EPA’s website, it is expected that DPC’s, if required, will cost Kohler Company’s Generator Division between \$3,500,000 and \$5,000,000 in initial installation costs. It is also expected that

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			<p>annual maintenance costs will be very high, that fuel consumption will increase for some engines, and that it may require larger, more expensive engines on some generator models.</p> <p>The significant cost this proposed “Wisconsin only” regulation would impose on the Generator Division would make its ability to compete with out-of-state competitors much more difficult in what is already a very lean and competitive market. Loss of market share and jobs to the out-of-state and international competitors is a very distinct possibility.</p>
15.	NR445.05(1)	Exemptions – Group 1 virgin fossil fuels	<p>As previously stated, Kohler Co. does not believe that removal of the exemption for diesel exhaust is warranted or justified. Assuming however that the exemption is removed, please consider the following comment:</p> <ol style="list-style-type: none"> 1. The proposed qualifier to this exemption, “...in an external combustion furnace,” limits far beyond what was intended by not allowing the exemption for gasoline, natural gas or propane internal combustion engines. If diesel exhaust is to be regulated under NR445 as WDNR is proposing, Kohler Co. suggests that this exemption read, “Emissions from the combustion of group 1 virgin fossil fuels, <i>excluding diesel exhaust particulate emissions from compression ignition internal combustion engines burning diesel fuel oil.</i>”
15.	NR445.05(4)	Exemptions – Indoor fugitive emissions	<ol style="list-style-type: none"> 1. Applying the conditional statements to the Indoor Fugitive Emission exemption is inappropriate and unnecessary. Fugitive emissions within a building are regulated by OSHA. If emissions within a building meet OSHA worker requirements, then they are surely safe to disperse into the atmosphere. <p>A concern the environmental lobby raised at one of the TAG meetings was that OSHA is too short on staffing to adequately assure that the worker exposure levels were actually be met. We strongly disagree with their concern and site the following:</p> <ul style="list-style-type: none"> • Companies are responsible to both their employees and OSHA to maintain a safe and healthy workplace. It is unnecessary and redundant for the WDNR to also get involved in this arena. • OSHA, not WDNR, has jurisdiction, compliance and enforcement responsibility

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			<p>over indoor air quality.</p> <ul style="list-style-type: none"> • Sources should not have to provide blanket demonstrations on OSHA compliance to the WDNR. • Besides its routine inspection programs, OSHA is readily available and very responsive to worker complaints. • Workers do contact OSHA if they feel their employer is not meeting basic health requirements and OSHA does respond. • WDNR inspectors currently have the right to ask companies during an inspection to demonstrate that they are meeting OSHA requirements <u>if</u> they see a condition of concern. WDNR even stated during one of the TAG meetings that they felt this procedure was effective and working.
15. – 16.	NR445.05(5)&(6)	Exemptions – Gasoline dispensing	<ol style="list-style-type: none"> 1. Gasoline dispensing facilities are already regulated under NR420.04 and should be exempt in this regulation. It does not seem appropriate to further limit the scope of the exemption to only cover emissions with standards expressed as control requirements.
16. – 17.	NR445.XX	Incidental emissions	<ol style="list-style-type: none"> 1. Sources that are in certain non-industrial SIC codes or that emit less than one ton per year of particulate or VOC are small / incidental emitters. It does not seem appropriate for them to have to go through the additional research and second guessing that sub-criteria (a) through (c) impose.
18.	NR445.06(1)(g)	Risk based demonstration	<ol style="list-style-type: none"> 1. An option should be available to model “individual” hazardous air contaminants having control requirements against the 1 in 100,000 risk factor to show compliance. Adding the modeled results from all sources having control requirements against the 1 in 100,000 risk factor makes the analysis much more involved and costly; without any known health benefit. Should it be shown that the health risks from a combination of specific chemicals are additive, then just those specific chemicals should be regulated through appropriate rule making. Imposing these additional analysis costs on industry for such an unknown is inappropriate and punitive. 2. Demonstrations involving “all sources” should <u>not</u> include fugitive emissions unless they are from

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			<p>processes outside of an enclosed building or structure. Fugitive emissions that may escape from building ventilation systems are insignificant in nature while the effort and cost to quantify and model those emissions would be very high.</p> <p>3. Hazardous air contaminants with control requirements that do not have US EPA unit risk factors and do not have significant off property impacts require a better off-ramp than is being proposed in Draft 3. A means to “model out” needs to be added to the rule.</p> <p>For materials having unit risk factors WDNR modeled “backwards” from the acceptable off-site concentration to arrive at the threshold emission amounts per stack height. Using that same concept in reverse, an acceptable off-site concentration may be modeled from the new table’s threshold emission amounts. Kohler Co. proposes that through modeling the WDNR determine the maximum off-site concentration allowable for each control requirement material not having a US EPA unit risk factor, based on the threshold values in the table.</p>
19.	NR445.06(1)(k)	Reference concentration revisions	<p>1. The word “may” should be changed to “shall”. Sources should not have to invest a second time to meet changed reference concentrations. The word “shall” makes that point much clearer.</p>
20.	NR445.06(1)(l)	Safe Harbor	<p>1. Request that the first sentence be changed to read: “The owner or operator of a source which has achieved compliance with emission standards in this chapter shall be held harmless for deficiencies relating to new, undetected substances provided the owner or operator of the source exercised due diligence in identifying and quantifying hazardous air contaminants listed in this chapter <u>according to NR445.02(5).</u>”</p>
20.	NR445.06(3)(a)	Compliance extensions	<p>1. Valid circumstances may exist where a source requires an extension of more than 6 months to come into compliance. It is requested that the allowable extension be changed to a maximum of 36 months. It should be noted that even with the longer maximum extension time, the WDNR would still have the authority to deny, limit or grant any requested extensions based on the validity of the request and any potential harm to the environment that may occur due to the longer compliance period.</p>

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20.	NR445.06(3)(b)	Compliance extensions	<p>1. The word “may” in the first sentence should be changed to “shall”. The modified phrase within the sentence would then read, “... <i>shall</i> not be required to install ...”.</p> <p>Also, additional control equipment should not be required for any period under 10 years or the useful life of the equipment, whichever is <u>greater</u>. Control equipment is often a major investment for a source. WDNR should not have the authority to force a source to invest in new control equipment within the 10-year period by simply declaring that its useful life has been exceeded.</p>
20.	NR445.06(3)(c)	Compliance extensions	<p>1. It is critical for Wisconsin businesses to respond quickly to necessary production modifications as a means of survival. Forcing industry to wait on the Department for up to 6 months before being allowed to move forward with its control compliance plan is much too long. Funding and resource allocations often take considerable time so it is important that the source not be held back awaiting approval. It is requested that the Department’s decision be made <i>within no more than 45 calendar days</i> of receiving the information from the source.</p> <p>Furthermore, if the Department does not approve, conditionally approve or disapprove of the source’s plan within the allotted time (45 days), the plan should be deemed <i>acceptable</i>.</p>
23.	NR445.08(2)(c)	Biennial process to update NR445	<p>1. Biennial updating of NR445 is too onerous, costly, and resource intensive. We propose that scheduled updating of this rule be done at a frequency of 5 years or more.</p>
24.	NR445.09	Special studies	<p>1. Placing completion deadlines within the rule for silica and wood studies and the resultant rule changes are unrealistic and not necessary. While it is possible that the proposed timing will be met, it is equally possible that they cannot be met while still having a quality study done. These studies are expected to be very involved and exactly how much time will be required before sound conclusions and resolutions may be reached is unknown. These issues are much too significant to have half-resolved mandates implemented because of</p>

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			<p>completion deadlines.</p> <p>Alternatively, Kohler Co. proposes that the required studies be initiated within 90 days of the effective date of the rule and that steady progress then be made towards any possible modifications to the rule. The major effort and steady progress that is being made by the WDNR, TAG and interested parties in this NR445 revision is proving that the task can be taken seriously and best results will be attained.</p>

Kohler Co. respectfully requests that WDNR include the above comments as revisions to the draft rulemaking.

Please contact me at phone (920)457-4441 ext. 77465, e-mail myron.hafele@kohlerco.com, or the letter head address, if you would like to discuss any of these comments.

Sincerely,

Myron Hafele
Supervisor – EHS Air Group

c.c. Paul Kubicek
Steven Westphal